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— LLP —  
LAWYERS

E-filed May 20, 2009

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**UNITED STATES BANKRUPTCY COURT  
DISTRICT OF NEVADA**

In re:

USA Commercial Mortgage Company,

USA Capital Realty Advisors, LLC,<sup>1</sup>

USA Capital Diversified Trust Deed Fund,  
LLC,

USA Capital First Trust Deed Fund, LLC,<sup>2</sup>

USA Securities, LLC,<sup>3</sup>

Debtors.

**Affects:**

- ☐ All Debtors
- ☒ USA Commercial Mortgage Company
- ☐ USA Capital Realty Advisors, LLC
- ☐ USA Capital Diversified Trust Deed Fund, LLC
- ☐ USA Capital First Trust Deed Fund, LLC
- ☐ USA Securities, LLC

Case No. BK-S-06-10725-LBR  
Case No. BK-S-06-10726-LBR<sup>1</sup>  
Case No. BK-S-06-10727-LBR  
Case No. BK-S-06-10728-LBR<sup>2</sup>  
Case No. BK-S-06-10729-LBR<sup>3</sup>

**CHAPTER 11**

Jointly Administered Under Case No.  
BK-S-06-10725 LBR

**Response of the USACM Liquidating  
Trust to Curtis F. Clark's Response  
to Order to Show Cause**

Date: May 29, 2009  
Time: 9:30 a.m.  
Place: Courtroom 3  
Foley Federal Building  
300 Las Vegas Blvd., South  
Las Vegas, Nevada

The USACM Liquidating Trust (the "Trust") is not a party to the issue pending before this Court – whether Curtis F. Clark should be referred for potential prosecution of criminal contempt pursuant to this Court's Order to Show Cause as amended and the Trust takes no position on whether this Court should or should not find cause to refer the matter to the United States District Court for potential prosecution of criminal contempt. Nevertheless, Mr. Clark served his response and declaration upon counsel for the Trust and makes statements therein which are so false or otherwise improper as to require the Trust to correct the record.

<sup>1</sup> This bankruptcy case was closed on September 23, 2008.

<sup>2</sup> This bankruptcy case was closed on October 12, 2007.

<sup>3</sup> This bankruptcy case was closed on December 21, 2007.

**I. Mr. Clark's Attacks Have Been Venomous From The Start**

From the virtual inception of the bankruptcy case, Mr. Clark reacted with vicious, false and outlandish attacks.<sup>4</sup> Mr. Clark's attacks thus pre-date confirmation of the plan and go to something completely different than his alleged "frustration with the Liquidating Trust's inability to recover assets, despite expending millions to do so," which his counsel suggests "prompted Mr. Clark's metaphorical comments."

After the Plan was confirmed, the Trust began its effort to analyze proofs of claim. One of the themes of omnibus objections with respect to alleged secured claims was that while the lenders might have security in the collateral provided by their borrowers, they did not have any security in the assets of the jointly administered Debtors, including USACM. In response to such an omnibus objection to an alleged secured claim, Mr. Clark filed a response supporting an alleged \$20,870,000 secured claim.<sup>5</sup>

Mr. Clark received a letter from counsel to the Trust dated April 11, 2007, attempting to explain the omnibus claims objection and resolve his issues. In response, Mr. Clark sent a letter dated April 16, 2007, filed by the Clerk on April 30, 2007 at DE 3631.<sup>6</sup>

After the omnibus objection was granted, notice of entry of the proposed order was sent to Mr. Clark. The order re-characterized the secured claim as an unsecured claim, subject to potential objection. In response, Mr. Clark sent a letter filed by the Court on June 8, 2008 at DE 3941.<sup>7</sup>

As part of its post-confirmation obligations, the Trust has provided a quarterly report to the creditors, which is both filed with the Clerk as well as posted for review without charge on the Trust website. Those reports, which are available for the Court's reference and will not be reproduced in the record here, demonstrate the step by step efforts of the Trust to liquidate assets, analyze claims, and increase the value of the Trust

<sup>4</sup> See letter from Curtis F. Clark received May 3, 2006, filed at DE 150, a copy of which is attached and incorporated here as **Exhibit A**.

<sup>5</sup> Document filed by Curtis F. Clark on April 4, 2007 at DE 3338 (**Exhibit B**).

<sup>6</sup> **Exhibit C**.

<sup>7</sup> **Exhibit D**.

1 estate by commencing and settling causes of action. In response to a proposed settlement  
2 with a professional firm (BPTK), Mr. Clark sent a letter filed by the Clerk on November  
3 8, 2008 at DE 6605.<sup>8</sup>

4 Finally, Mr. Clark's response to the proposed settlement and sale of causes of  
5 action to collect prepaid interest to Debt Acquisition Company of America V was his  
6 letter filed February 12, 2009 at DE 6813 under consideration by this Court.

7 **II. The Allegation That The Trust Has Not Located Funds For Creditors Is False**

8 Mr. Clark's response posits the hypothesis that the Trust, mis-identified in the  
9 Clark Response as the "USA Capital Liquidating Trust," obtained and wasted millions of  
10 dollars "searching for assets of the USA Capital entities", rather than recover assets or  
11 pay creditors. The factual premise of this hypothesis is simply false.

12 First, the efforts of professionals representing, among others, the jointly  
13 administered Debtors, the official committees appointed to represent the unsecured  
14 creditors of USA Commercial Mortgage Company, the equity security holders of USA  
15 Capital Diversified Trust Deed Fund, LLC, the equity security holders of USA Capital  
16 Diversified Trust Deed Fund LLC, and the direct lenders (represented through a  
17 committee of parties to executory contracts), as well as the Office of the United States  
18 Trustee and the Court resulted in, ultimately, confirmation of a chapter 11 Plan of  
19 Reorganization.

20 With respect to Mr. Clark's argument that no assets have been collected for the  
21 benefit of creditors, the Trust notes that numerous collections have been reported in the  
22 Trust's quarterly reports, including:

- 23 • resolution of the dispute over the \$9.5 million additional bid by Compass  
24 where competing claims were asserted by the equity security holders for  
25 USA Capital First Trust Deed Fund, LLC, compromised with this Court's  
26 approval;<sup>9</sup>

27  
28 <sup>8</sup> **Exhibit E.**

<sup>9</sup> See pages 6 – 7 of the Trust's first Quarterly Report, filed July 18, 2007 at DE 4184.

- collection of sums due in litigation pending with Lowe Enterprises and Redwood Properties, and an interpleader.<sup>10</sup>
- The Trust also pressed for reductions in professional fee applications after Plan confirmation resulting in almost \$4 million in reductions.<sup>11</sup>
- In order to obtain creditor control over entities affiliated to USACM, the Trust and reorganized USA Capital Diversified Trust Deed Fund, LLC obtained orders for relief in involuntary bankruptcy cases against USA Investment Partners, LLC, Thomas Hantges, and Joseph Milanowski.<sup>12</sup> (In fact, Mr. Clark's counsel Mr. Callister represented Hantges for a time in the Hantges bankruptcy case.)
- The Trust recovered three life insurance policies on the life of Thomas Hantges, approved as a settlement with the USAIP Trustee.<sup>13</sup>
- The Trust collects prepaid interest from post-confirmation loan servicers.<sup>14</sup>
- After a bench trial the Trust obtained judgment against Salvatore Reale for \$4 million;<sup>15</sup>
- The Trust resolved and substantially reduced the disputed priority and other claims of the Pension Benefit Guaranty Corporation, for which almost \$2 million had been held in reserve;<sup>16</sup>
- The Trust negotiated payment for direct lenders of the direct loan called USA Investors VI, LLC in full as well as payment of \$2 million for the Trust's right to collect default interest, late charges and attorneys' fees;<sup>17</sup>

<sup>10</sup> See page 7 of the first Quarterly Report.

<sup>11</sup> First Quarterly Report at page 8.

<sup>12</sup> Quarterly Report filed October 18, 2007 at DE 5035 at pages 5 – 7.

<sup>13</sup> Quarterly Report for the period ending December 31, 2007 filed January 25, 2008 at DE 5730 at page 12.

<sup>14</sup> Third Quarterly Report at page 21; Fourth Quarterly Report at pages 18, 21.

<sup>15</sup> Quarterly Report for the period ending March 2008, filed on April 30, 2008 at DE 6280 at page 8.

<sup>16</sup> Quarterly Report at pages 14 – 15.

<sup>17</sup> Quarterly Report at pages 17 – 18.

- The Trust obtained a court-approved settlement with USA Capital Diversified Trust Deed Fund, LLC resulting in release of reserves between the Trust and DTDF, as well as an agreement by the Trust to pay a certain percentage of future recoveries to DTDF.<sup>18</sup>
- The Trust is prosecuting and has settled a number of avoidance actions.<sup>19</sup>
- The Trust has prosecuted and settled several major adversary proceedings, including settlements with Beadle McBride, Evans & Reeves, LLP et al;<sup>20</sup>
- Piercy, Boller, Taylor & Kern PC;<sup>21</sup>
- a confidential settlement with an additional target;<sup>22</sup> and
- minor settlements.<sup>23</sup>
- A settlement with JMK Investments, Ltd. and other defendants was approved by the Court and initial payments received.<sup>24</sup>
- The Trust and the successor to Silar as the Asset Purchaser entered into a settlement of disputes over \$2,099,067.79 in escrow accounts, which was approved by the Court.<sup>25</sup>
- A new settlement with USAIP and Toblak, LLC et al was recently approved by the Court resulting in distribution of funds to the Trust.<sup>26</sup>
- A number of other recent settlements of litigation claims are being documented and will be presented to the Court for approval.

<sup>18</sup> Quarterly Report at pages 22 – 23.

<sup>19</sup> Quarterly Report for the period ending September 2008, filed on November 10, 2008 at DE 6614 at page 6; Quarterly Report, for the period ending March 2009, filed at DE 7125 at pages 4 – 8.

<sup>20</sup> Quarterly Report for the period ending December 2008 filed on February 17, 2009 at DE 6829 at pages 6, 8.

<sup>21</sup> Quarterly Report at page 8.

<sup>22</sup> Quarterly Report at pages 8 – 9.

<sup>23</sup> Quarterly Report at page 9.

<sup>24</sup> Quarterly Report at page 15.

<sup>25</sup> Quarterly Report at pages. 16 – 18.

<sup>26</sup> Quarterly Report, for the period ending March 2009, filed at DE 7125 at pages 21 – 22.

### **III. The Implication That The Trust Is Wasting Money Rather Than Paying Creditors' Claims Is False**

Part of the creditors' misunderstanding reflects the status of claims. From the inception of the case, massive claims were filed against the USACM estate, including:

- seven administrative claims filed totaling \$2,016,499.08;
- 103 priority claims filed totaling \$7,751,955.91;
- 1,676 secured claims filed totaling \$297,052,436.44;
- 1233 unsecured claims filed totaling \$627,644,759.4; and
- 78 unknown claims filed totaling \$389,390.57

Without resolution of substantial amounts of the proofs of claim, any effort at an interim distribution to creditors would involve holding almost all of the funds available for distribution in reserve for the unresolved claims. To that end, the proper characterization of over \$300 million in claims was obtained, and well in excess of \$200 million in unsecured claims resolved. Without attempting to tie these summary numbers together, the Trust estimates that the unresolved claims now total approximately \$378 million. The Trustee has tentatively decided to make an interim distribution to creditors when the unresolved claims are less than \$200 million. In contrast, the total allowed claims to date, including the DTDF claim, are approximately \$178 million.

Distributions have been made from reserves to holders of administrative expense claims, priority claims, and to the extent valid, secured claims. In addition, approximately \$10.0 million has been paid to the DTDF administrator for distribution to DTDF members and which the Trust is advised was the substantial source of the first distributions to DTDF members.

### **Conclusion**

To summarize, Mr. Clark's apparent, personal contempt of this process and the professionals involved with it, including the Court, is long-standing and is not based upon his alleged frustration with either the collection efforts or the pace of distributions from the USACM Liquidating Trust.



1 Dated: May 20, 2009.

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Proof of Service

Copy of the foregoing served on May 20, 2009, via e-mail to all parties with e-mail addresses on the Post Effective Date Official Service List on file with this Court and to:

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